



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 2, 1998

Mr. Robert J. Gervais
Assistant City Attorney
City of Galveston
Legal Department
P.O. Box 779
Galveston, Texas 77553-0779

OR98-1375

Dear Mr. Gervais:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 115754.

The Galveston Police Department (the "department") received an open records request for "any written policies concerning inmates receiving medical care and treatment at U.T.M.B. Galveston." You state that the department does not possess any information coming within the ambit of this request and you have informed the requestor accordingly. It is well-established that the Open Records Act does not require a governmental body to prepare new information in response to an open records request. Open Records Decision Nos. 452 (1986), 342 (1982).

The same requestor also seeks all grievances, reprimands, and disciplinary actions taken against a named city police officer. You state that some responsive information will be released to the requestor. You contend, however, that records pertaining to complaints against the officer that did not result in disciplinary action are confidential under section 143.089 of the Local Government Code and therefore must be withheld from the public pursuant to section 552.101 of the Government Code.¹ Section 143.089 of the Local Government Code provides in pertinent part:

¹Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

(a) The director [of the police officers' civil service] or the director's designee shall maintain a personnel file on each . . . police officer. The personnel file must contain *any* letter, memorandum, or document relating to:

....

(2) any misconduct by the . . . police officer if the letter, memorandum, or document is from the employing department and *if the misconduct resulted in disciplinary action* by the employing department in accordance with this chapter.

....

(b) A letter, memorandum, or document relating to alleged misconduct by the fire fighter or police officer may not be placed in the person's personnel file if the employing department determines that there is insufficient evidence to sustain the charge of misconduct.

....

(g) A . . . police department may maintain a personnel file on a . . . police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a . . . police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the . . . police officer's personnel file. [Emphasis added.]

In Open Records Decision No. 562 (1990), this office discussed the confidentiality of personnel file information maintained by police and fire departments in cities that have adopted the fire fighters' and police officers' civil service law in accordance with the provisions of chapter 143 of the Local Government Code. Section 143.089 of the Local Government Code provides for the creation of two personnel files for police officers: one that is maintained by the city's civil service director and the other by the city police department.

Information contained in personnel files held by the civil service, including all records relating to misconduct by police officers that resulted in disciplinary action, must be released to the public unless the information comes within one of the Open Records Act's exceptions to required public disclosure. Because the records before us all pertain to complaints that did not result in disciplinary action, they appear to be from the personnel

files held by the city police department and as such are made confidential under section 143.089(g) of the Local Government Code. Consequently, the department may not release these records to the requestor. *See also City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/RWP/ch

Ref.: ID# 115754

Enclosures: Submitted documents

cc: Mr. Roy L. Warren
Attorney at Law
P.O. Box 0169
Texas City, Texas 77592
(w/o enclosures)